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Divine legislation in the Pentateuch in its late Judean and Neo-Babylonian context

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ZORA URL: <https://doi.org/10.5167/uzh-126966>

Book Section

Published Version

Originally published at:

Schmid, Konrad (2016). Divine legislation in the Pentateuch in its late Judean and Neo-Babylonian context. In: Dubovský, Peter; Markl, Dominik; Sonnet, Jean-Pierre. The fall of Jerusalem and the rise of the Torah. Tübingen: Mohr Siebeck, 129-153.

The Fall of Jerusalem and the Rise of the Torah

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Mohr Siebeck

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ISBN 978-3-16-154054-7

ISSN 0940-4155 (Forschungen zum Alten Testament)

Die Deutsche Bibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available on the Internet at <http://dnb.dnb.de>.

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The book was printed by Gulde Druck in Tübingen on non-aging paper and bound by Buchbinderei Spinner in Ottersweier.

Printed in Germany.

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Divine Legislation in the Pentateuch in its Late Judean and Neo-Babylonian Context

Konrad Schmid

With its notion of divine laws, the Pentateuch stands out in its ancient Near Eastern legal context, since lawgiving was usually the task of kings, not of gods. From a historical perspective, the Pentateuch's concept of God as lawgiver was not a given from the beginning of its literary and legal history, but developed over time. The earliest components of the Covenant Code do not present their stipulations as divine laws. Rather, this perspective on the laws as God's laws results from different redactional framings of older collections that introduce God as speaker and lawgiver. This paper will ask about the processes and factors that enabled this notion of divine law, asking how they might relate to the historical experience of the falls of Samaria and Jerusalem and to the loss of kingship in ancient Israel and Judah.

1. Introduction

The Torah incorporates God's law as having been passed to Moses on Mount Sinai. According to the Pentateuch as it now stands, God is a lawgiver from the very beginning of the storyline in Genesis. The first speech that God addresses to the human beings in Gen 1:28 is a commandment that, according to some strands of the Jewish tradition, is the most important one:

פרו ורבו	Be fruitful and multiply,
ומלאו את-הארץ וכבשה	and fill the earth and subdue it;
ורדו בדגת הים	and have dominion over the fish of the sea
ובעוף השמים	and over the birds of the air
ובכל-חיה הרמשה	and over every living thing that moves
על-הארץ	upon the earth.

Likewise in the second narrative of the Bible, Gen 2–3, God's first word involves a commandment that alludes to a traditional, legal stipulation of capital punishment:

מכל עץ-הגן אכל תאכל	You may freely eat of every tree of the garden;
ומעץ הדעת טוב ורע	but of the tree of the knowledge of good and evil
לא תאכל ממנו	you shall not eat,
כי ביום אכלך ממנו מות תמות	for in the day that you eat of it you shall die.

The deeply anchored understanding of God as a lawgiver has perhaps made this notion so commonplace in scholarship that biblical interpreters do not recognize it as a historical problem.¹ The best way to clarify this point is to look into the history of scholarship. Over the last four decades in Hebrew Bible studies, three major developments have been responsible for highlighting the notion of divine legislation in the Pentateuch as a historical problem.

The first of these developments is the contextualization of the Hebrew Bible, especially its legal traditions, within the broad realm of the ancient Near East. This methodological move was inaugurated in the late nineteenth and early twentieth centuries by the “History of Religions” school,² but was later neglected for a variety of reasons in the mid-twentieth century. However, over the past five decades the general increase in scholarship on ancient Near Eastern laws and the interaction between ancient Near Eastern and biblical scholars have produced detailed inquiries that show not only the commonalities, but also the differences, between Mesopotamian and ancient Israelite legal traditions.³

The second development is the departure from the once dominant approach of Albrecht Alt in the interpretation of biblical law.⁴ His approach was closely tied to the drawing of sharp distinctions between Canaan and Israel, which, especially since the 1990s, has become less and less plausible within biblical studies.⁵

The third development is the transformation of pentateuchal research that began in the mid-1970s and which – as one factor among others – brought pentateuchal theory closer to the results of the literary-historical investigation into other biblical books.⁶ The changes in pentateuchal studies brought this sub-discipline closer to those reconstructions of the history of religion in ancient Israel and Judah that are based not on the biblical records, but on epigraphy and archaeology. The Pentateuch’s storyline of a God who creates the world, takes care of the patriarchs, leads Israel out of Egypt and gives Moses the law on Mount Sinai does not belong at this literary history’s beginning,⁷ but rather toward its end.⁸

Accordingly, just as we do with the other roles of God (for example God as creator),⁹ we are justified in asking how the notion of God *as a lawgiver* developed within the intellectual and literary history of the Pentateuch.¹⁰ Tackling this question involves a number of obstacles. As is well known, scholarship

¹ See e.g. LUX, “Hammurapi und Mose”, 112–139, 257–258.

² Cf. LÜDEMANN / ÖZEN, “Religionsgeschichtliche Schule”, 618–624.

³ Cf. OTTO, “Rechtsgeschichte”, 56–82.

⁴ ALT, *Ursprünge*.

⁵ Cf. FINKELSTEIN / NA’AMAN (eds.), *Nomadism*; FRITZ, *Entstehung*.

⁶ Cf. e.g. RÖMER, “Urkunden”, 2–24; *idem*, *Einleitung*, 120–168; DOZEMAN *et al.* (eds.), *Pentateuch*.

⁷ VON RAD, *Problem*; followed by NOTH, *Pentateuchal Traditions*.

⁸ See the discussion and bibliography in GERTZ, “Stellung”, 30–45.

⁹ Cf. SCHMID, “Schöpfung”, 71–120.

¹⁰ For the LXX see RÖSEL, “Nomothese”, 132–150.

on the Pentateuch is a contentious field with many divisions. One of these divisions pertains to the dating of pentateuchal texts. There is general agreement on one very basic statement: the Pentateuch's narrative plays out in the second millennium BCE, but it was written in the first millennium BCE. It may be that some of its oral roots or tradition-historical backgrounds reach back to the second millennium, but its literary history belongs to the first millennium.¹¹

But how can we know whether – or, if so, how – the Pentateuch reflects the fall of Jerusalem in 587 BCE?¹² At least in European scholarship, ever since the late dating of P by Graf, Reuss, Kuenen and Wellhausen, there has not been much doubt that this post-587 date is valid at least for some portions of P,¹³ as well as for a series of post-P additions to the Pentateuch. However, when we observe the global discussion on the Pentateuch's composition, it is not possible to speak of a consensus in this regard. Scholars such as Israel Knohl, Baruch Schwartz, Joel Baden, Jeffrey Stackert, William Schniedewind, Jan Joosten and others assign the Pentateuch largely – with some exceptions – to the monarchic period.¹⁴ From such a perspective, the fall of Jerusalem would have had its impact on a Pentateuch that was either mostly or entirely complete.

In order to approach the question of whether or not the Pentateuch presupposes the fall of Jerusalem, four basic observations are in order.¹⁵ Three of these seem to support the assumption that the Pentateuch presupposes this event, and one seems to point in the opposite direction. Of course, as always in biblical studies, such observations are never completely inevitable in nature, but remain to some extent debatable. Otherwise we would not have such divergent conclusions in scholarship. Yet it remains our task to assess and discuss the evidence in order to get a clearer notion of the history of the Pentateuch.

¹¹ See the overview in SCHMID, "Pentateuch", 239–271.

¹² Cf. e.g. STECK, *Old Testament*, 143–150.

¹³ See the standard text assignments by ELLIGER, "Sinn", 121–143; LOHFINK, "Priesterschrift", 183–225; OTTO, "Forschungen zur Priesterschrift", 1–50. There is debate regarding the original end of P, especially in the wake of PERLITT, "Priesterschrift im Deuteronomium?", 123–143. Proposals include seeing the literary end either at Exod 29 (OTTO, "Forschungen zur Priesterschrift"); Exod 40 (POLA, *Priesterschrift*; KRATZ, *Komposition*, 102–117; BAUKS, "Signification", 29–45); Lev 9 (ZENER, "Priesterschrift", 435–446; *idem*, *Einleitung*, 156–175); Lev 16 (KÖCKERT, *Leben*, 105; NIHAN, *Priestly Torah*, 20–68); or Num 27 (SKA, "Récit", 631–653). A staggering of endings within the Priestly document between Exod 40 and Lev 26 is suggested by GERTZ (ed.), *Grundinformation*, 236. FREVEL, *Blick*, supports the traditional conclusion in Deut 34 (cf. SCHMIDT, *Studien*, 271; WEIMAR, *Studien*, 17). BLENKINSOPP, "Structure of P", 275–292; LOHFINK, "Priesterschrift", 183–225; KNAUF, "Priesterschrift", 101–118; GUILLAUME, *Land and Calendar*, sees the conclusion of P^g in Joshua. For arguments against P as a source in Exodus see BERNER, *Exoduserzählung* (see, however, my "Review", 292–294); ALBERTZ, *Exodus 1–18*, 10–26. WÖHRLE, *Fremdlinge*, holds a similar position for Gen 12–50.

¹⁴ Cf. e.g. KNOHL, *Sanctuary*; STACKERT, *Prophet*, 31–35.

¹⁵ See also the discussion in SKA, *Introduction*, 184–187; RÖMER, "Naissance", 21–43.

2. Is the Torah an Exilic Document?

The four observations just mentioned are the following:

First, the Torah plays out mostly outside the land of Israel. Of course, the ancestors in the book of Genesis already dwell within the land, but they are called “strangers”. Bracketing the question of the extent to which the Torah’s content is fictitious, it seems to address and presuppose an audience acquainted with life in the diaspora. As David J. A. Clines once put it: “The Torah is an *exilic* document in terms of its content, regardless of how one dates its texts”.¹⁶ In this respect, it is especially noteworthy that Israel’s laws are given outside the land. The law in the Pentateuch is apparently not tied to the land, a point highlighted even more through the prominent placement of the Decalogue in Exod 20 and Deut 5, serving as a prologue to the laws both of Sinai and Transjordan, and which may be observed everywhere in the diaspora, not just in Israel’s homeland.

Secondly, in political terms, the Pentateuch is basically a republican document, not a monarchic one. While the Pentateuch’s laws deal with many things, they hardly ever address issues surrounding a king. The only exception is the law of the king in the book of Deuteronomy. But, significantly, this text presents the choice of a king as an option that Israel may or may not take (according to Deut 17:14–15): “When [כִּי] you have come into the land ... and you say, ‘I will set a king over me, like all the nations that are around me’, you may indeed set over you a king ...”.¹⁷ We are not left with the impression that the Torah is concerned primarily with kingship and monarchy. This political observation is, of course, consistent with the Torah’s narrative setting – well before the establishment of kingship in Israel and Judah – but it is also consistent with the text’s having a post-monarchic production milieu and audience.

Thirdly, the laws of the Pentateuch are interpreted as God’s laws.¹⁸ This point is the chief topic of the present article. According to the Torah, God is Israel’s lawgiver. This feature is striking in light of the ancient Near Eastern notion that gods are not directly involved in the process of legislation, especially not as the immediate source of the laws. Legislation is the natural task of kings, not of gods. Nevertheless, it is difficult to determine precisely how ancient Near Eastern legal texts interpret the relation between gods, kings and the law. Jacob Finkelstein once put it this way:

What the god “gives” the king is not “laws” but the gift of perception of *kittum*, by virtue of which the king, in distinction from any other individual, becomes capable of promulgating laws that are in accord or harmony with the cosmic principle of *kittum*.¹⁹

¹⁶ CLINES, *Theme*, 103–104.

¹⁷ On this text, see RÖMER, “Deutéronome 17”, 99–111, for a date in the Persian period (here 104–105); see also KNOPPERS, “Deuteronomist”, 329–346; LEVINSON, “Reconceptualization”, 511–543.

¹⁸ Cf. BRAGUE, *Law of God*.

¹⁹ In a note appended to GREENBERG, “Some Postulates”. This is cited by PAUL, *Studies*, 7. Cf. OTTO, “Recht und Ethos”, 91–109, 105.

An apt illustration of these relationships is available in the epilogue to the Codex Hammurabi, where Hammurabi states: “I, Hammurabi, am a righteous king [šàr mi-ša-rim]; to me Shamash has granted the eternal truths / rights [ki-na-tim]”. Hammurabi is neither the author nor the source of *kinatu*, but rather receives them from Shamash. But Shamash himself seems not to be considered the ultimate source of *kinatum*. In the inscription of Yaḥdun-Lim, king of Mari, the king writes in his introduction: “To Shamash, the king of the heavens and the earth, the magistrate of gods and men, whose allotted portion is righteousness [me-še-rum] to whom truths / rights [ki-na-tum] have been granted as a gift”. Apparently, *kinatu* is considered to have a meta-divine origin, with Shamash himself being not the source, but rather a recipient of *kinatu*. To be clear, though, the texts I have just quoted cannot be used to reconstruct a singular ancient Near Eastern conception of the relationship between laws and gods.

Since the Torah is anchored in a pre-monarchic narrative setting, it would, of course, have been impossible to develop the notion of a royal lawgiver other than God, the only and real king of Israel. Nevertheless, the divine origin of Israel’s laws is a very distinctive feature of the Torah that does not immediately support an exclusively monarchic dating of its texts.

Fourthly, the Hebrew of the Torah is what most scholars deem to be Classical or Standard Biblical Hebrew, as opposed to Early or Late Biblical Hebrew. With comparative reference to the corpus of epigraphical Hebrew texts from the monarchic period, some scholars conclude that, based on its linguistic character, the Pentateuch is basically a preexilic document. The most recent argument along these lines is Gary A. Rendsburg’s entry on “Linguistic Layers in the Pentateuch” in the *Encyclopedia of Hebrew Language and Linguistics*. He comes to the following conclusion:

In sum, the main body of the Torah is written in Standard Biblical Hebrew, which represents the language of Judah during the monarchy (both early and late). A few chapters employ the technique known as style-switching, in order to create an Aramean environment. Some poems within the prose text reflect an older stratum of Hebrew and may hark back to a poetic epic tradition. And a few passages, especially those concerning the northern tribes, contain elements of Israelian Hebrew. Most importantly, there are no indications of Late Biblical Hebrew in the Pentateuch.²⁰

Of course, Rendsburg’s conclusion is at odds with other basic observations made earlier in this paper. Yet despite his argument, the indisputable fact that the Torah is written in Standard Biblical Hebrew does not necessarily lead to the conclusion that its texts are preexilic in origin. This issue is a very complicated and delicate matter.²¹ But from the perspective of Pentateuch scholarship, several aspects come to mind that deserve consideration.

²⁰ RENDSBURG, “Pentateuch”, 60–63, here 63.

²¹ Some more recent contributions to the discussion of linguistic dating include KIM, *Early Biblical Hebrew*; MILLER-NAUDÉ / ZEVIT (eds.), *Diachrony*; HORNKOHL, “Biblical Hebrew”, vol. 1, 315–325; REZETKO / YOUNG, *Linguistics*.

First, the fact that a text is written in Standard or Classical Biblical Hebrew (CBH) and not in Late Biblical Hebrew (LBH) informs us primarily about its *theological* position within the biblical tradition and not, or at least not directly, about its *historical* date of composition. To oversimplify for a moment: CBH texts are mainly Torah-orientated, whereas LBH texts are not, at least not to the same extent.

Secondly, there is a significant gap in the external, non-biblical corpora for Hebrew from the sixth to second centuries BCE. Although there are many inscriptions from that period, they are in Aramaic, not Hebrew. Therefore, the external evidence does not enable us to define a clear *terminus ante quem* for CBH. The *terminus ante quem* could be in the sixth century, but it could also be later.

Thirdly, there is a basic asymmetry between the methods that linguists use for dating CBH texts, on the one hand, and LBH texts, on the other. According to them, biblical texts written in CBH belong to the timeframe of the eighth to sixth centuries because the matching external evidence dates to that period. The external evidence for LBH consists mainly of the texts from the Dead Sea from the second and first centuries BCE, but the biblical texts written in LBH, such as Chronicles, Ezra, Nehemiah, Daniel and Esther, are dated much earlier by the linguists because these texts are – for a variety of reasons at least in part – obviously older than the second or first century. Therefore, as a minimum, the arguments regarding LBH show that a multitude of positions need to be considered when dating biblical texts, and what seems fair for LBH should also be accepted for CBH.

Fourthly, the absence of Persian loanwords is an important argument among those who favour a generally preexilic date for the Pentateuch. The reasoning is that, if the Pentateuch were to contain texts from the Persian period, then one would expect to find Persian loanwords, of which there are none. But how significant is this point?²² To begin with, there are very few Persian loanwords in the Hebrew Bible as a whole.²³ So, admittedly, no Persian loanword is to be found in the Pentateuch. But why should we expect otherwise? It is necessary here to invoke the specific narrative setting of the Pentateuch: The Pentateuch plays out basically in the second millennium BCE, in the period before David, Solomon, the Assyrians, the Babylonians and, of course, the Persians. The Pentateuch's awareness of this historicized scenery is most clearly evident from the fact that the Pentateuch refrains from mentioning Jerusalem, especially in Gen 22 and Deuteronomy. Hence, Persian loanwords are not to be expected in so far as the Pentateuch employs a language corresponding to its narrative setting.

²² ESKHULT, "Importance", 8–23.

²³ See e.g., אֲדָרְכֹן *ādārḱōn* "Doric" (Ezra 8:27; 1 Chr 29.7); אֲחַשְׁדָּרְפָּנִים *ʾāḥašdarpanīm* "satraps" (e.g., Esth 8:9); גִּזְבָּר *gizbār* "treasurer" (Ezra 1:8); גְּזָזִים *ganāzīm* "treasury" (e.g., Esth 3:9); גִּזְזָא *ganzak* "treasury" (1 Chr 28:11); דָּת *dāt* "command, decree" (e.g., Esth 1:13); פִּתְגָּם *pitgām* "edict, sentence" (Qoh 8:11; Esth 1:20); פִּתְשֶׁגֶן *paṭšeḡen* "copy" (e.g., Esth 3:14). Cf. HURVITZ, "Biblical Hebrew", 329–338, here 331.

A fifth argument by Hebraists for an early (i.e. preexilic) dating of CBH texts is the idea that it would have been impossible to reproduce CBH in later times without slip-ups. The problem with this argument is a fundamental methodological one: it is *a priori* and thus not falsifiable. That is, the argument holds that if a biblical text is written in clear and flawless CBH, then it is *by definition* preexilic, because, had the text been composed later, it would not be in correct CBH. In such an argument, the possibility of a *late* text in correct CBH is excluded as impossible *from the outset*. Indeed, it simply begs the question to view CBH as being copy-safe. Of course, languages evolve over time, but in a learned elite idiom such as CBH, a certain inertness is likely.

All in all, I would not altogether deny the validity of using a linguistic approach for dating the Pentateuch, but I would strongly advise against using linguistic criteria *alone* for issues of dating, let alone for determining the Pentateuch's overall preexilic origin. The linguistic approach belongs in conjunction with other data and perspectives, such as theological or ideological profiles, intertextual links and archaeological information.

While I cannot speak on the archaeological data, I can and will address the ideological profiles of the Pentateuch.²⁴ This paper has already made some basic observations in this regard and will now focus on the third point identified above as hinting at the Torah's exilic shaping: namely, the notion that its laws are God's laws.

3. The Notion of Divine Legislation in the Pentateuch as a Historical Problem

First, a possible misunderstanding of this article's title needs to be corrected. This paper does not argue that the notion of divine legislation *originated only and exclusively after* the fall of Jerusalem and is, as such, to be conceived as an *entirely* post-monarchic intellectual development in the legal history of ancient Israel. The main reason for this decision is the dating of Deuteronomy's literary core – originally probably a freestanding literary unit presenting its laws as God's laws – to the late monarchic period of Judah. Of course, such a dating of the "Ur-Deuteronomium" is contested, but nevertheless still possible, and even more widely accepted than an exilic setting.²⁵

Norbert Lohfink's famous question: "Das Deuteronomium: Jahwegesetz oder Mosegesetz?" is thereby, for our purposes, of lesser significance, because even if one decides that the fiction of Mosaic authorship belongs to Deuteronomy's

²⁴ Cf. SCHMID, *Old Testament*.

²⁵ On this new "Kampf um das Deuteronomium" (BAUMGARTNER, "Kampf", 7–25), see PAKKALA, "Date", 388–401 (following KRATZ, "Ort", 101–120); MACDONALD, "Issues", 431–435; PAKKALA, "Dating of Deuteronomy", 431–436.

original literary shape, then the first person of Moses in Deuteronomy is a prophetic one.²⁶ Even in this case, Moses does not just speak in his own capacity, but as God's prophet, so the first person of Moses is transparent to the first person of God.

This probable setting of Deuteronomy's literary core in the late seventh century BCE is the reason why this paper is on "Divine Legislation in the Pentateuch in its Late Judean and Neo-Babylonian Context". In what follows, the non-pentateuchal notions of divine legislation in the Hebrew Bible will be described, in order to get an initial impression of the literary and historical contexts in which this concept is mentioned or not mentioned, as well as to see how these findings have been evaluated in the history of scholarship. This paper will then turn to the law collections in the Pentateuch, especially the Covenant Code, discussing its redactional framing of older law collections interpreting them as God's laws. Finally, some historical explanations for the development of the notion of a divine lawgiver in Israel and Judah in its ancient Near Eastern context will be offered.

4. Sinai and God's Legislation on Sinai outside the Pentateuch

It is not possible to discuss here all possible references to divine legislation in the Hebrew Bible, though it needs to be highlighted from the outset that, if one were to concentrate on the Sinai legislation, this task would not be too difficult. It could suffice just to consult Martin Noth's *Überlieferungsgeschichte des Pentateuch* and see what he has to say about the theme "Offenbarung am Sinai" (revelation at Sinai). Indeed, the lawgiving at Sinai is only mentioned rarely outside the Pentateuch, and this is mostly in literary contexts that do not belong to the earliest layers of biblical literature. A very traditional observation is that the earliest non-pentateuchal reference to the lawgiving at Sinai in its narrative context of the Exodus story is Neh 9:13–14.

ועל הר־סיני ירדת	And you came down also upon Mount Sinai,
ודבר עמהם משמים	and spoke with them from heaven,
ותתן להם משפטים ישרים	and gave them right ordinances
ותורות אמת	and true laws,
חקים ומצות טובים	good statutes and commandments,
ואת־שבת קדשך הודעת להם	and you made known your holy sabbath to them
ומצוות וחקים ותורה	and commandments and statutes and a law
צוית להם	you commanded them
בִּיד משה עבדך	through your servant Moses.

Ps 106:19 also mentions the Sinai viz. Horeb, but only the incident of the golden calf, not the lawgiving:

²⁶ LOHFINK, "Deuteronomium", 387–391.

יעשו־עגל בחרב And they made a calf at Horeb,
ושתחוו למסכה and they worshipped a cast image.

Conversely, Ezek 20:10–11 mentions the lawgiving, but not Mount Sinai. The lawgiving takes place in the desert (ואבאם אל־המדבר), so it is, of course, possible that Mount Sinai may be in view. Nonetheless, it remains conspicuous that it is not mentioned explicitly.²⁷

Consistent with this scarce evidence are the famous references to Sinai in Judg 5:4–5, Hab 3:3 and Ps 68:8, all of which are entirely silent about the law but which invoke God's theophany there or from there. Usually, these texts are considered to be early, or at least to rely on early traditions.²⁸ Pfeiffer has argued to the contrary,²⁹ but his position has been heavily and, to my mind, rightly criticized by Leuenberger.³⁰

יהוה בצאתך משעיר	YHWH, when you went out from Seir,
בצעדך משדה אדום	when you marched from the region of Edom,
ארץ רעשה	the earth trembled,
גם־שמים נטפו	and the heavens poured,
גם־עבים נטפו מים	the clouds indeed poured water.
הרים נזלו מפני יהוה	The mountains quaked before YHWH,
זה סיני מפני יהוה אלהי ישראל	the one of Sinai, before YHWH, the God of Israel.

Judg 5:4–5

אלוה מתימן יבוא	God came from Teman,
וקדוש מהר־פארן סלה	the Holy One from Mount Paran. <i>Selah</i>
כסה שמים הודו	His glory covered the heavens,
ותהלתו מלאה הארץ	and the earth was full of his praise.

Hab 3:3

אלהים בצאתך לפני עמך	O God, when you went out before your people,
בצעדך בישומן סלה	when you marched through the wilderness, <i>Selah</i>
ארץ רעשה	the earth quaked,
אף־שמים נטפו	the heavens poured down rain
מפני אלהים זה סיני	at the presence of God, the one of Sinai,
מפני אלהים אלהי ישראל	at the presence of God, the God of Israel.

Ps 68:8–9

What can we glean from this very preliminary and sketchy picture? Nothing reliable, of course, because the far-reaching silence about the lawgiving at

²⁷ See the discussion in KRÜGER, *Geschichtskonzepte*, 199–274.

²⁸ Cf. discussion in KEEL, *Geschichte Jerusalems*. See for Judg 5 especially KNAUF, “Deborah’s Language”, 677–690.

²⁹ Cf. PFEIFFER, *Jahwes Kommen*. See also *idem*, “Herkunft”, 11–43.

³⁰ LEUENBERGER, “Jhwhs Herkunft”, 1–19.

Sinai outside the Pentateuch would, first of all, constitute a mere *argumentum e silentio* regarding its literary and historical anchoring in the Pentateuch. But these observations nevertheless require explanation and, as a glance into the history of scholarship reveals, such an argument is not completely worthless.

5. The Historical Interpretation of the Divine Legislation at Sinai in the History of Scholarship

In early twentieth-century scholarship, the rather isolated position of the lawgiving at Sinai in the Hebrew Bible was evaluated in terms of the Sinai tradition and the Exodus tradition as having different tradition-historical origins.³¹ For example, Gerhard von Rad associated the Exodus and the Sinai tradition with two different festivals that were located at two different venues.³²

They [the Sinai events] seem to have formed a tradition unto themselves which existed independently of that scheme [of the salvation history from the creation to the conquest of the land] and was only linked to it very late.³³

But his theory presupposed what it actually needed to demonstrate beforehand: the oldness of the Sinai tradition and the notion of divine legislation associated with that location.

However, until the late 1960s it was unthinkable that the lawgiving at Sinai and the covenant established there between God and his people would not belong to the bedrock, the “Urgestein”, of ancient Israelite religion. For instance, in von Rad’s *Theology of the Old Testament* dating from 1957, he held that, without exception, all laws of the Pentateuch presuppose the notion of a covenant between God and people, as reported in the Sinai texts.

At any rate, the close link between ordinances and covenant needs to be kept in view. All of Israel’s laws, indeed, presuppose the covenant as an already established community between Yahweh and Israel, and a sacred institution.³⁴

Von Rad made this statement in 1957, twelve years before Lothar Peritt’s *Bundestheologie im Alten Testament* was published. Peritt’s *Habilitationsschrift* was a major *caesura* in the historical interpretation both of the notion of covenant and the intellectual framework of the Hebrew Bible’s legal traditions.

³¹ Cf. the analysis of the history of scholarship in NICHOLSON, *Exodus*.

³² See also NOTH, *Überlieferungsgeschichte*, 63–67.

³³ VON RAD, *Problem*, 20: “Diese [die Sinaiereignisse] scheinen demnach eine Tradition für sich gebildet zu haben, die unabhängig von jenem Schema [der Heilsgeschichte von der Schöpfung bis zur Landnahme] bestand und sich erst sehr spät mit ihm verbunden hat.”

³⁴ VON RAD, *Theologie*, vol. 1, 207: “Unter allen Umständen muss die enge Verbindung zwischen Geboten und Bund im Auge behalten werden. Alle Gesetze Israels setzen ja den Bund als eine zwischen Jahwe und Israel zustandegekommene Gemeinschaft und sakrale Institution schon voraus.”

The first observation is as old as it is important: the Sinai pericope, even in its latest shape, evokes the impression of a major insertion into the context.³⁵

His dating of the covenant theology to the seventh century coincided with Frankena's,³⁶ Dion's and Weinfeld's³⁷ proposals in the 1960s and early 1970s to interpret Deuteronomy's notion of covenant in light of Neo-Assyrian vassal treaties, a view that nowadays is fairly well accepted. Interestingly enough, Perlitt quotes Frankena's and Weinfeld's work, but does not really evaluate them substantially in his *Bundestheologie*.

The loose connection between the Sinai texts and the surrounding Exodus narrative was also noticed by Wellhausen and others in their days:

It seems as though the pilgrimage to Sinai had no place at all in the oldest saga. An outline appears through it according to which the Israelites immediately after the exodus from Egypt travelled to Kades and remained there for the forty years of their sojourn in the desert. The digression to a point [i.e. Sinai] that is so distant from the actual destination of the wanderers is unnatural enough.³⁸

But the Sinai pericope was not deemed just to be a late, redactional insertion. Rather, as texts such as Judg 5, Ps 68, Hab 3 and Deut 33 suggest, Wellhausen contended that:

The true and ancient significance of Sinai is entirely independent from the lawgiving. It was the dwelling of divinity, the holy mountain.³⁹

The transition from the holy mountain to the station of the lawgiving was, according to Wellhausen, established by the Jehovist.

³⁵ PERLITT, *Bundestheologie*, 156: "Die erste Beobachtung ist eine ebenso alte wie gewichtige: Die Sinaiperikope erweckt selbst in ihrer jüngsten Gestalt den Eindruck eines gewaltigen Einschubs in den Kontext."

³⁶ FRANKENA, *Vassal-Treaties of Esarhaddon*, 122–154.

³⁷ Cf. WEINFELD, "Traces", 417–427.

³⁸ WELLHAUSEN, *Israelitische*, 12: "Es scheint, als ob die Wallfahrt zum Sinai in der ältesten Sage überhaupt keine Stelle gehabt habe. Es schimmert eine Form derselben durch, wonach die Israeliten sofort nach dem Ausbruch aus Ägypten auf Kades zogen und dort die vierzig Jahre ihres Aufenthalts in der Wüste verblieben. Unnatürlich genug ist die Digression nach einem Punkte, der so weit von dem eigentlichen Ziel der Ausgewanderten ablag." Cf. also *idem*, *Prolegomena*, 357–358: "Im Jehovisten scheint noch eine Form der Überlieferung durch, in welcher die Israeliten, sofort nach dem Durchgange durchs Schilfmeer auf Kades zogen und nicht erst den Abstecher zum Sinai machten. Während wir erst in Ex. 19 zum Sinai gelangen, befinden wir uns schon in Ex. 17 zu Massa und Meriba, d.h. auf dem Boden von Kades Darum kehren auch die Erzählungen, die vor der Ankunft am Sinai berichtet werden, nach dem Aufbruch von dort noch einmal wieder, weil das Lokal vorher und nachher das gleiche ist Das besagt mit anderen Worten, dass die Israeliten nicht erst nach der Digression zum Sinai, sondern sofort nach dem Auszuge in Kades, dem ursprünglichen Ziel ihrer Wanderung, anlangten." See, similarly, VON RAD, *Problem*, 20–21; and *idem*, *Theologie*, vol. 1, 189.

³⁹ WELLHAUSEN, *Prolegomena*, 342: "Die wahre und alte Bedeutung des Sinai ist ganz unabhängig von der Gesetzgebung. Er war der Sitz der Gottheit, der heilige Berg."

The Jehovist is here more than a redactor, he can be deemed as the actual author of the pericope of lawgiving on Sinai. Otherwise he stands back behind his sources. Here, he follows them verbally to a large extent, but only in so far as he needs them as material for his own construction.⁴⁰

Nevertheless, the Pentateuch's present shape apparently indicates how loose the connection is between the Sinai texts and its contexts. In the first half of the twentieth century, scholars such as Eissfeldt and von Rad offered their own, not always or immediately convincing, thoughts on this observation:

Although the memory of these events [at Sinai] always remained alive in Israel, after the settlement in Canaan the connection to Sinai quickly became loose.⁴¹

The merging of the Sinai tradition into the tradition of the conquest of the land was the particular venture of the Yahwist to which people remained unaccustomed for a long time; only around the time of exile did this connection become popular.⁴²

Of course, these explanations reflect the familiar image of Israel's salvation history as constituting the basic feature of biblical faith. Today, scholars no longer unanimously presuppose this image in their literary-historical reconstructions. The creedal formulation in Deut 26:5–9 can no longer serve as a literary-historical basis for that image, nor do reconstructions of ancient Israel and Judah's history of religion support it.⁴³

It is therefore likely that the literary anchoring of God's laws at Mount Sinai in the exodus story not only became "popular" in the time of the exile, but also that this literary anchoring did not emerge much earlier than that.

In order to explore this point more closely, let us turn now to what is presumably the earliest body of texts in the Pentateuch that includes divine laws, the so-called Covenant Code. Its dating is, of course, contested and its texts developed over a period of time. But its literary core probably presupposes the earliest prophetic books and transforms their social message into legal stipulations. Furthermore, it is presupposed by Deuteronomy, which reworks the Covenant Code in terms of a centralized cult, as William Morrow, Bernard Levinson, Eckart Otto and others have shown.⁴⁴

⁴⁰ WELLHAUSEN, *Composition*, 94–95: "Der Jehovist ist hier mehr als Redaktor, er kann als der eigentliche Verfasser des Abschnittes von der Gesetzgebung auf Sinai gelten. Während er sonst ganz hinter seinen Quellen zurücktritt, teilt er sie zwar auch hier grossenteils wörtlich mit, aber doch so, dass er sie nur als Material zu dem eigenen Bau benutzt."

⁴¹ EISELDT, "Sinai", 44: "Obwohl die Erinnerung an diese Vorgänge [sc. am Sinai] in Israel immer wach geblieben ist, ist seit seiner Seßhaftwerdung in Kanaan die Verbindung mit dem S.[inai] schnell locker geworden."

⁴² Cf. VON RAD, *Problem*, 61: "[D]ie Verschmelzung der Sinaitradition in die Landnahmeüberlieferung war das freie Wagnis des Jahwisten, an das man sich noch lange Zeiten darnach nicht gewöhnen konnte; erst um die Zeit des Exils ist diese Verbindung populär geworden." See the critique by PERLITT, *Bundestheologie*, 159.

⁴³ Cf. GERTZ, "Stellung", 30–45.

⁴⁴ Cf. MORROW, *Scribing*; OTTO, *Das Deuteronomium*; LEVINSON, *Deuteronomy*.

6. The Process of Theologizing the Laws in the Covenant Code and Deuteronomy

Since the late 1990s, especially in the wake of Eckart Otto's *Wandel der Rechtsbegründungen* and Ludger Schwienhorst-Schönberger's dissertation, it has become fairly well accepted in scholarship that the so-called Covenant Code consists of earlier, smaller, literarily independent law collections that include the stipulations on capital punishment in Exod 21:12–17, the stipulations on bodily injuries in Exod 21:18–32 and the stipulations concerning objects in Exod 21:33–22:14.⁴⁵ Apparently these collections were not originally conceived as God's law. This later conception of them resulted from what is now their textual frame of Exod 20:24–26 and Exod 22:17–26, which are passages addressing the reader in the second person and occasionally using the first person of God. By contrast, the core passages of the Covenant Code are in the third person, and no divine speaker is apparent within them.⁴⁶

The addition of Exod 20:24–26⁴⁷ and Exod 22:17–26 played a crucial role in the process of theologizing these laws.⁴⁸ The first text, especially, the so-called altar law, is important in terms of dating, since Deut 12 presupposes and reworks it, as Bernard Levinson and others have pointed out. Deut 12 may serve as a *terminus ante quem* for Exod 20:24–26. The reinterpretation of the Covenant Code through its prefacing by the altar law is therefore a pre-Deuteronomic feature. Consequently, there is much to the proposal of Eckart Otto that the

⁴⁵ SCHWIENHORST-SCHÖNBERGER, *Bundesbuch*. For a different approach see OSUMI, *Kompositionsgeschichte*.

⁴⁶ “Das ‘Bundesbuch’ wurde aus kleineren, ursprünglich literarisch selbständigen Sammlungen redigiert, so einer Sammlung des gentilen Todesrechts in Ex 21,12–17 ..., einer Sammlung des Körperverletzungsrecht in Ex 21,18–32 sowie einer Sammlung des Sachenrechts in Ex 21,33–22,14. Diese Sammlungen aus der jüdischen Schreiber- und Richterausbildung der vorexilischen Zeit wurden in einer ersten priesterlich-theologischen Redaktion in Ex 20,24–22,26* unter dem Aspekt, JHWH als Königsgott sei Rechtsquelle und gnädiger Rechtshelfer der Armen, zu einem Programm eines von JHWH gegebenen Rechts zusammengefügt. Die sozialen Bruchlinien der jüdischen Gesellschaft wurden zum Einfallstor der Theologisierung des Rechts ..., das nun auf den Gotteswillen als Rechtsquelle zurückgeführt wurde, nicht aber mehr wie im mesopotamischen Recht auf den König als den Repräsentanten des Staates. Mit der Theologisierung des Rechts im ‘Bundesbuch’ wird durch unmittelbare Rückführung auf JHWH einer zunächst noch kleinräumigen Rechtssammlung eine Bewegung in Gang gebracht, die mit der Unterstellung der gesamten Tora unter den Gotteswillen in nachexilischer Zeit zu ihrem Ziel kommt. Noch ist die Hermeneutik, die der Theologisierung des Rechts im ‘Bundesbuch’ zugrunde liegt, denkbar einfach, ergreift doch hier im Abschluss in Ex 22,17–26* und ihrem Anfang in Ex 20,24–26 mit dem Altargesetz JHWH selbst das Wort.” (OTTO, *Deuteronomium* 1,1–4,43, 231f.). See also *idem*, “Profanrecht”, 421–427.

⁴⁷ JOOSTEN, “Syntax”, 3–8; JOHNSTONE, “Exodus 20.24b”, 207–222; SCHMITT, “Altargesetz”, 269–282.

⁴⁸ Cf. ALBERTZ, “Theologisierung”, 187–207.

process of theologizing the law started already in the preexilic period. If one looks at Exod 22:17–26, this process seems specifically to have been triggered by the need for care for poor and socially disadvantaged persons, a concern which, in turn, may have resulted from major socio-economic shifts in seventh-century Judah, perhaps including the fall of Samaria.⁴⁹ Because this care for the disadvantaged is usually the king's responsibility, it becomes immediately obvious that the divinization of these laws implies a critical stance towards Judean kingship.

The redactional technique that was used seems fairly elementary: the stipulations are formulated in the second person singular, thus implying that God is the speaker. But it is by no means clear whether all second-person singular passages belong to the same literary layer.

מכשפה לא תחיה	17 You shall not let live a sorceress.
כל־שכב עס־בהמה מות יומת	18 Whoever lies with an animal shall be put to death.
זבח לאלהים יחרם	19 Whoever sacrifices to any god,
בלתי ליהוה לבדו	other than YHWH alone, shall be destroyed.
וגר לא־תונה ולא תלחצנו	20 You shall not wrong or oppress a resident alien,
כי־גרים הייתם בארץ מצרים	for you were aliens in the land of Egypt.
כל־אלמנה ויתום לא תענון	21 You shall not abuse any widow or orphan.
אס־ענה תענה אתו	22 If you do abuse them,
כי אס־צעק יצעק אלי	when they cry out to me,
שמע אשמע צעקתו	I will surely heed their cry;
וחרה אפי	23 my wrath will burn,
והרגתי אתכם בחרב	and I will kill you with the sword,
והיו נשיכם אלמנות	and your wives shall become widows
ובניכם יתמים	and your children orphans.
אס־כסף תלוה את־עמי	24 If you lend money to my people,
את־העני עמד	to the poor among you,
לא־תהיה לו כנשה	you shall not deal with them as a creditor;
לא־תשימון עליו נשך	you shall not exact interest from them.
אס־חבל תחבל שלמת רעך	25 If you take your neighbour's cloak in pawn,
עד־בא השמש תשיבנו לו	you shall restore it before the sun goes down;
כי הוא כסותה לבדה	26 for it may be your neighbour's only clothing
הוא שמלתו לערו	to use as cover;
במה ישכב	in what else shall that person sleep?
והיה כי־יצעק אלי	And if he cries out to me,
ושמעתי כי־חנן אני	I will listen, for I am compassionate.

Exod 22:17–26

Some verses in this significant passage contain hints regarding the possible ideological backgrounds and origins of the introduction of the second person of God. First, the opening passage in 22:17–18 is conspicuous:

מכשפה לא תחיה	17 You shall not let live a sorceress.
כל־שכב עס־בהמה מות יומת	18 Whoever lies with an animal shall be put to death.

⁴⁹ Cf. KESSLER, *Staat*.

The prohibition of sodomy is formulated in the third person, the law regarding the sorceress in the second person. This might lead to the assumption that the religiously connotative regulation is more conducive to being shaped as divine law than the sodomy case. But this assumption remains uncertain, especially because the prohibition in 22:19 against sacrificing to gods other than YHWH is a third-person stipulation.

More conclusive is Exod 22:21f., 25f., since God reveals himself here in the first person as the speaker of these laws that focus on widows, orphans and the poor.⁵⁰ These verses apparently complement the existing traditional legal stipulations in the Covenant Code with the “ethical” notion of caring for those without legal protection, and for this reason they introduce God as the lawgiver.

It is also discernible that the inclusion of these regulations in the Covenant Code seems influenced by early prophetic tradition. What the prophets claimed as social justice, the Covenant stipulates as law.⁵¹ For example, compare Amos 2:6–8 with the statement of divine law (in the second person) in Exod 22:24–26:

Amos 2:6–8

Thus says the Lord: for three transgressions of Israel, and for four, I will not revoke the punishment; because they sell the righteous for silver, and the needy for a pair of sandals – they who trample the head of the poor into the dust of the earth, and push the afflicted out of the way ... they lay themselves down beside every altar on garments taken in pledge; and in the house of their God they drink wine bought with fines they imposed.

Exod 22:24–26

If you lend money to [one of] my people, to the poor among you, you shall not deal with them as a creditor; you shall not exact interest from them. If you take your neighbour’s cloak in pawn, you shall restore it before the sun goes down; for it may be your neighbour’s only clothing to use as cover; in what else shall that person sleep? And if your neighbour cries out to me, I will listen, for I am compassionate.

The case of Deuteronomy is especially complicated because of its Mosaic outlook. The book’s laws are now presented as Mosaic laws, which presupposes the Deuteronomic law’s narrative embedding within the great Exodus-Sinai story.⁵² In his farewell speech in Transjordan, Moses promulgates the laws that he received from God beforehand on Mount Sinai and, in a complex hermeneutical procedure, the readers of Deuteronomy are identified with the Exodus generation whom Moses addresses in Deut 5. As mentioned already, this shaping is probably not original to the laws of Deuteronomy. As Lohfink has pointed out, Deut 6:17 and Deut 28:45 in particular conceptualize the laws of Deuteronomy explicitly as God’s laws, which supports the assumption that the portrayal of Moses as promulgating Deuteronomy’s laws has resulted from a reworking of the text.

⁵⁰ KRATZ, *Komposition*, 147.

⁵¹ Cf. DEARMAN, *Property Rights*, 147–148.

⁵² According to KRATZ, “Ort”, 101–120, there never was a literarily independent Deuteronomy detached from the Exodus story.

ובאו עליך כל־הקללות האלה ורדפוּך והשיגוּך עד השמדך כי־לא שמעת בקול יהוה אלהיך לשמר מצותיו וחוקתיו אשר צוּך	All these curses shall come upon you, pursuing and overtaking you until you are destroyed, because you did not obey YHWH your God, by keeping the commandments and the decrees that he commanded you.
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Deut 28:45

שמור תשמרון את־מצות יהוה אלהיכם ועדתיו וחקיו אשר צוּך	You must diligently keep the commandments of YHWH your God, and his decrees, and his statutes that he has commanded you.
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Deut 6:17

Thus, Moses as the legislator, or at least the mediator, of the law is not an original feature of Deuteronomy, but instead resulted from its redactional mediation with the Sinai legislation once the Deuteronomic law had become part of the large story of Israel's exodus from Egypt, which included the legislation at Mount Sinai.

Altogether, then, Deuteronomy attests to the notion of divine lawgiving from the outset, probably as a result of its taking up this concept from the reworked and still preexilic Covenant Code.

7. Tradition-Historical and Literary-Historical Precursors to God as Lawgiver in the Hebrew Bible

What were the basic historical factors that triggered the notion of divine law in the Hebrew Bible? Eckart Otto, in particular, has convincingly argued that the origins of this process had to do with the experience of social injustice in Israelite and Judean society during the late eighth and early seventh centuries.⁵³ In addition, some more indirect factors might have played a role as well. I will name four of these, at least two of which are intertwined with each other.

First, legal jurisdiction in ancient Israel and Judah was traditionally quite distant from the institution of kingship, as Hans-Jochen Boecker, for example, has pointed out.⁵⁴ The family and the elders were in charge of most affairs. We do not even have the clear regulation that crimes involving a capital punishment had to be decided by the king, as was the case in Mesopotamia.

Second, one must take into account the solarization of God that took place once He became affiliated with Jerusalem, as Othmar Keel has argued.⁵⁵ It is less certain as to whether 1 Kgs 8:12 suggests that YHWH replaced the pre-Yahwistic

⁵³ Cf. OTTO, *Wandel*, 69–71.

⁵⁴ BOECKER, "Überlegungen", 3–9. See also OTTO, "Zivile Funktionen", 519–530.

⁵⁵ KEEL, "Tempelweihspruch", 9–23; *idem*, *Geschichte Jerusalems*; *idem*, "Sonne der Gerechtigkeit", 215–218.

sun god in the temple.⁵⁶ Be this as it may, Jerusalem traditionally had close ties with the cult of the sun, as the name of the city itself suggests, and the prominence of solar worship in Jerusalem had an impact on the development of preexilic Yahwism in Jerusalem.

Why is this issue important for our question? The sun god is traditionally in charge of supervising the laws and passing them on to the kings, as we can recall from the stela of Hammurabi.⁵⁷ Accordingly, the solarization of YHWH meant bringing him into an intimate connection with the fields of law and justice.

This close connection is observable in texts such as the following:

יהוה צדיק בקרבה	YHWH within her [sc. Jerusalem] is righteous;
לא יעשה עולה	he does no wrong.
בבקר בבקר משפטו יתן	Every morning he renders his judgment,
לאור לא נעדר	each dawn without fail;
ולא־יודע עול בשת	but the unjust knows no shame.

Zeph 3:5

God's righteousness is affiliated both with Jerusalem and with the rising of the sun in the morning, a topic that Bernd Janowski has dealt with extensively.⁵⁸

עֲלִיכֶן חֲצַבְתִּי בְּנֵי־אִים	Therefore I have hewn them by the prophets,
הֲרַגְתִּים בְּאִמְרֵי־פִי	I have killed them by the words of my mouth,
וּמִשְׁפָּטֶיךָ אֹרֶךְ יָצָא	and my judgment goes forth as the light.

Hos 6:5

God's enemies are eliminated by his words, and his judgment is compared to the sunlight. Of course, these texts are not yet advancing the notion of God as a lawgiver. Here, God is both a judge and an executioner, but these texts are not far removed from the notion of divine legislation. Therefore, part of the background of portraying the biblical God as a legislator is to be found in the solar substratum of Jerusalem's religious history.

Third, and probably linked closely with this topic of solar imagery, is the notion of Jerusalem and Zion as city of justice. Isaiah 1:21–26 is a traditional piece at the beginning of the book of Isaiah that clearly exhibits this conception of Jerusalem as a "just" city.⁵⁹

איכה היתה לזונה קריה נאמנה	How the faithful city has become a whore!
מלאתי משפט	She that was full of justice,
צדק ילין בה	righteousness lodged in her –
ועתה מרצחים	but now murderers!

Isa 1:21

⁵⁶ Cf. HARTENSTEIN, "Sonnengott", 53–69; RÖSEL, "Salomo", 402–417. See the rebuttal by KEEL, "Minima methodica", 213–223.

⁵⁷ Cf. ELSÉN-NOVÁK / NOVÁK, "König", 131–155.

⁵⁸ Cf. JANOWSKI, *Rettungsgewißheit*; *idem*, "JHWH", 214–241.

⁵⁹ Cf. STECK, "Zur konzentrischen Anlage", 97–103; SCHMID, *Jesaja 1–23*, 56–58.

As YHWH resides in Jerusalem, he is the city's God, which is likewise reflected in the manifold identifications of Jerusalem as God's wife. This close connection between God and Zion-Jerusalem, the city of justice, is another important root of the intellectual development that resulted eventually in the notion of divine laws in the Covenant Code's literary frame and in Deuteronomy. Especially important is the mountain symbolism traditionally associated with Zion. Consider Ps 48:11–12 as an example.

כִּשְׁמְךָ אֱלֹהִים בֶּן תְּהִלָּתְךָ	Your name, O God, like your praise,
עַל־קְצוֹי־אָרֶץ	reaches to the ends of the earth.
צֶדֶק מְלֵאָה יְמִינְךָ	Your right hand is filled with victory.
יִשְׂמַח הַר־צִיּוֹן	Let Mount Zion be glad,
תִּגְלַנָּה בְּנוֹת יְהוּדָה	let the towns of Judah rejoice
לְמַעַן מִשְׁפָּטֶיךָ	because of your judgments.

Apparently, in the wake of the fall of Jerusalem, the notion of YHWH as the God in charge of justice on Mount Zion was transformed into the concept of the divine legislator on Mount Sinai. That is not to suggest that Mount Sinai is merely the invention of exilic authors. Mount Sinai seems to be a traditional element of the religious history of early Yahwism, as texts such as Hab 3, Judg 5, Ps 68 or Deut 33 suggest. But as Wellhausen observed, Sinai's original function was not as the venue of lawgiving. We may therefore assume that, after the fall of Jerusalem, the Sinai tradition became more and more important, especially by and in the wake of the Priestly document's location of the original sanctuary at Sinai.⁶⁰

Fourth, one should adduce the impact of the Neo-Assyrian vassal treaties on Deuteronomy and the corresponding reworking of the Covenant Code in both form and content.⁶¹ As is well known, Deuteronomy seems to have been shaped according to a Neo-Assyrian vassal treaty, but the role of God in Deuteronomy is entirely different from those of the gods in the vassal treaties who serve as witnesses and guardians of these treaties.

God as a partner in the treaty is an innovation of Deuteronomy's literary core. And as a partner in such a treaty, specifically as the superior partner, he is a lawgiver as well. This concept was potentially inspired by what may have been an earlier development within the Covenant Code, triggered especially by the experience of social injustice. But since Deuteronomy shows the same concern for socially disadvantaged people, the two developments may belong more closely together. However, this issue seems impossible to decide.

One aspect of the reception of vassal treaties has so far been underestimated – namely, the fact that the treaties are succession treaties.⁶² They ensure that those

⁶⁰ On the notion of "Sinai" as desert and mountain in P, see SCHMID, "Sinai", 114–127.

⁶¹ STEYMAN, *Deuteronomium* 28; *idem*, "Eine assyrische Vorlage", 119–141; OTTO, *Treueid und Gesetz*, 1–52; *idem*, *Das Deuteronomium*; *idem*, "Assyria", 339–347, esp. 345.

⁶² STEYMAN, "Die literarische und historische Bedeutung", 331–349.

whom Esarhaddon has subdued will be loyal to his successor. If the topic of succession was crucial for these treaties, it must have played a role as well in the reception of these texts in Deuteronomy. Levinson and Stackert have proposed that we parallel the process in Deuteronomy of legal exegesis on the Covenant Code with Ashurbanipal's succession of Esarhaddon:

The Assyrian rulers – predecessor and successor – are analogized to Israelite law – old and new. Just as the retiring ruler is succeeded by the crown prince designate, so too is the existing law collection succeeded by a new law. This correlation between EST and Deuteronomy is illustrated in the following diagram:

Text	Predecessor Rule	Successor Rule
EST	Esarhaddon	Ashurbanipal
Deuteronomy	Covenant Code	Deuteronomic Law

Assyrian Royal Succession and Biblical Legal Succession⁶³

This proposal is an interesting one, but it might be too bold. I could rather imagine that the succession topic belongs closer to the introduction of God as lawgiver in the Covenant Code and Deuteronomy, maybe especially reflecting the loss of kingdom and statehood in 720 BCE.

After the fall of Samaria, the post-monarchic situation in the North led to a need for a medium to replace the king, in order to ensure the identity of the people. I would therefore propose that the succession question is addressed in the Covenant Code and Deuteronomy, where God is Israel's eternal king and where, by means of his laws, his people are attached to him as their current and future suzerain.⁶⁴

Of course, the topic of legal exegesis remains crucial in this respect as well. The rise of legal exegesis is one of the most important consequences of the divinization of the law. The reason for that development is obvious: a divine law cannot be simply changed. Once it is there, it can only be altered by means of legal exegesis. As Jean Louis Ska put it:

The Law was of divine origin, and its validity was therefore “permanent”; it could not be abrogated. Consequently, a “new law” was considered to be a form of an old law. It was both identical and different. In practical terms, only a new “updated” formulation was valid.⁶⁵

⁶³ LEVINSON / STACKERT, “Covenant Code”, 138 (italics in the original).

⁶⁴ In addition, it would be worthwhile to investigate whether there is any influence from Spartan and early Roman law traditions, especially regarding the notion of normativeness. Cf. WATSON, *Laws*; MACDOWELL (ed.), *Spartan Law*; BALTRUSCH, *Sparta*.

⁶⁵ SKA, *Introduction*, 52.

8. Israel and Judah's Law in the Persian Period and God as Their Lawgiver

Finally, a specific process in the Persian period needs to be mentioned, a process definitely responsible for establishing the concept of divine law in ancient Israel and Judah – namely, the rise of the Pentateuch as Torah. Whether or not this development has to be explained by means of a Persian imperialization of the Pentateuch is not of major significance here, even though I do lean toward this explanation.⁶⁶ What is to be pointed out is that, by establishing the Pentateuch as Torah, this law as God's law seems to serve as the functional equivalent of the king's law, which is what Ezra 7:12, for example, suggests.⁶⁷ This Persian period establishment of the Torah as both divine and as the official law of the Jews probably fuelled clashes with later empires, especially the Romans, who did not respect the kind of loyalty the Jews had to their God-given law.⁶⁸

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⁶⁶ Cf. SCHMID, "Persian Imperial Authorization", 22–38.

⁶⁷ "Wo es einen König gibt, zu dessen Hauptaufgaben es gehört, Gesetze zu erlassen und in Kraft zu setzen, braucht man kein Gesetzbuch; im Gegenteil: das würde die legislative Kompetenz des Königs in ungebührlicher Weise einschränken. Das Gesetzbuch ersetzt daher in gewisser Weise den König. Und genau dies ist der Punkt. Die Torah tritt an die Stelle des altorientalischen Rechtskönigtums. Sie verschriftet nicht das juristische Wissen, sondern das königliche Machtwort, das aufgrund dieses autoritativen Anspruchs als Wort Gottes kodifiziert wird" (ASSMANN, *Fünf Stufen*, 17).

⁶⁸ Cf. BALTRUSCH, *Juden*.

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